1952, by virtue of Part XVII of the Ordinance which set out the special provisions dealing with Penang.

Case referred to:—

(1) *Public Prosecutor* v. *Yong Nam Seng* [1964] M.L.J. 85.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kean Siew for the appellant.

Abdullah bin Ghazali (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J.: The appellant was convicted by the learned president at Butterworth Sessions Court of an offence under section 129(1)(a) the Customs Ordinance, 1952, and fined $125. Forfeiture of the transistor radios, the subject-matter of the declaration, was ordered.

Briefly the appellant, a clerk in the forwarding department of a local lighterage and stevedoring firm, signed a set of customs declaration forms together with other ancillary documents, purportedly as agent for the importers, Tone Radio Co. of Alor Star. In his declaration, he stated two items of 100 set of Time Radio Transistors to be medium wave band transistor. A single wave band radio attracts duty of 5% but two or more wave band radios are chargeable with a duty of 25%. The goods were then transported by lorry driven by D.W.2 to whom the appellant also handed the set of customs declaration forms. When checked at Butterworth, the said two items were found to be 3 wave band and 2 wave band radios. The appellant pleaded that he was busy that morning and further that he had hoped for assistance from customs officers to ensure that the matters stated in the declaration form tally with the goods. He further pleaded that he had given specific instructions to the lorry driver to phone him if any mistake was detected. The learned president quite rightly held that subsection (2) of section 129 of the Ordinance, which reads:

"When any such declaration....has been proved to be untrue or incorrect....in whole or in part, it shall be no defence to allege that such declaration....was made or used inadvertently or without criminal or fraudulent intent or that the person signing the same, was not aware of, or did not understand the contents of, such document".

provided the answer to the appellant.

The petition of appeal set out six grounds none of which was seriously argued. Instead counsel for the appellant embarked on new grounds, namely, whether the declaration was one "required by this Ordinance" for the purposes of section 129(1)(a) and whether the place "the Customs Warehouse, Butterworth" specified in the charge was a "place of import" within the proviso to section 75 of the Customs Ordinance in the absence of evidence to that effect. It is not disputed that the declaration was signed by the appellant, which declaration was tendered to the customs at Butterworth by D.W.2 the driver of the lorry engaged by the appellant to transport the radios to the importer. Following Azmi J. in *Public Prosecutor* v. *Yong Nam Seng & Anor.*[1] I am satisfied that this is a declaration required by the Ordinance. It is a declaration enjoined by the proviso to section 75(1). I further hold that Butterworth is a place of import for the purposes of section 24 of the Ordinance by virtue of Part XVII of the Ordinance which set out the special provisions dealing with Penang.

One observation I would make is that the charge should have referred to the making of the declaration rather than the signing which was at Penang. However this error has not occasioned a failure of justice. For the reasons above, I dismiss this appeal.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*

HO YING CHYE v. TEH CHEONG HUAT

[O.C.J. (Raja Azlan Shah J.) August 6, 1965]

[K.L. — Civil Suit No. 131 of 1964]

Landlord and Tenant — Claim for possession by new owner — Tenant at will — Termination.

Land Code, ss. 96 and 116 — Whether agreement attempt to pass interest in land — Agreement not registered — Whether enforceable as a contract — Tenancy at will.

The plaintiff claimed possession of premises which were occupied by the defendant. The premises were originally purported to be let by the then landlord for a period of two years from September 1, 1957. The premises were subsequently assigned to the defendant. The agreement was not in the form of Schedule XXII to the Land Code and therefore could not and was not registered under the Land Code. The plaintiff who had become owners of the property gave notice to quit and on the expiry thereof claimed possession. The defence relied on by the defendant was that in view of the valuable consideration given to the previous owner it was agreed that the tenancy would not be disturbed.

Held: (1) the agreement in this case was an attempt to pass an interest in the premises and as it was not registered under the Land Code it was unenforceable;

(2) the agreement in this case would not be construed as an enforceable contract as on the proper construction of the agreement it was an attempt to pass an interest in the premises;

(3) in the circumstances the defendant was a tenant at will and as such his tenancy could be determined by a demand for possession.

Cases referred to:—

(1) *Haji Abdul Rahman and others* v. *Mahomed Hassan*, [1917] A.C. 209; 1 F.M.S.L.R. 290, P.C.

(2) *Margaret Chua* v. *Ho Swee Kiew & Ors.* [1961] M.L.J. 173.

(3) *Doe d. Price* v. *Price* (1832), 9 Bing. 356.

(4) *Fox* v. *Hunter-Paterson* [1948] W.N. 399.

CIVIL SUIT.

Cheng Tin Pin for the plaintiff.

M. Edgar for the defendant.

Raja Azlan Shah J.: In this case the plaintiff claims vacant possession from the defendant of the ground floor of premises known as No. 5, Jalan Pasar Bharu, Kuala Lumpur (hereinafter referred to as the "said premises"). It is agreed that the said premises was built in 1957 and is therefore outside the provisions of the Control of Rent Ordinance, 1956.

In his statement of defence the defendant pleaded as follows:

"(i) The defendant contends and will contend that in view of the valuable consideration given to the previous owner it was agreed that his tenancy would not be disturbed.

(ii) The defendant further contends and will contend that as he is a tenant under an unregistered agreement, he claims the protection of section 42(v) of the Land Code."

The latter line of defence was abandoned in the course of the proceedings. However, there is an admission that the defendant is a monthly tenant of the plaintiff of the said premises at a rental of $150 per month and that the said tenancy was duly terminated by a notice to quit dated 20th December, 1963 and served on the defendant the following day, which said notice expired on 31st January, 1964 (paragraphs 2 and 3 of statement of defence).

It is also admitted that in 1951 the Vui Shen Benevolent Association was the registered owner of the land on which the said premises stood. In 1957 the said association purported to grant a lease of the said premises to one Sze Hock Seng for a term of ten years at a rental of $150 per month with effect from 1st September, 1957. The purported lease was not registered in the manner prescribed in section 116 of the Land Code and was therefore ineffectual to pass the interest in the said premises to the defendant under section 96 of the Land Code.

The agreement (hereinafter referred to as the "said agreement") recited that one Chin Tham Shin was the landlord of the said premises and one Sze Hock Seng was the tenant thereof. It went on:

"WITNESSETH that the Landlord hereby lets to the Tenant the ground floor of No. 5 Jalan Pasar Bharu, Kuala Lumpur (hereinafter referred to as 'the said ground floor') for a period of ten (10) years from the 1st day of September 1957 at a rental of $150 (dollars one hundred and fifty only) per month payable in arrears on the last day of each month, the first of such payments to be made on the last day of September 1957 and upon the following terms and conditions".

There are various clauses inserted providing for non-interference from the landlord or those claiming under or in trust for him (clause 3); an undertaking to execute or cause to be executed a lease or sub-lease in favour of the defendant or his nominee upon the same terms and conditions (clause 4); a provision in favour of the tenant to transfer, assign, or sub-let (clause 5); a provision for an option to extend the lease for another period of ten years (clause 6); a provision that the agreement shall be binding upon the parties hereto, their heirs, executors and assignees (clause 7).

The defendant came into the picture some time in July 1958. This can be seen from the agreed bundle of documents produced by the defendant when on 1st July, 1958 the defendant paid a sum of $300 as deposit in respect of rent for the said premises. From here it can be inferred that the said premises was assigned to the defendant. It was not registered and again this was ineffectual to pass the interest therein to the defendant. In consequence of the registration of the association being cancelled, the ownership of the said premises passed to the official assignee in May 1963. On 16th December, 1963 the plaintiff bought the said premises and this was duly registered in accordance with the provision of registration under section 110 of the Land Code. On 20th December, 1963 the plaintiff issued a notice to quit upon the defendant which expired on 31st January, 1964. The defendant is still in possession. The plaintiff now claims vacant possession, double rent at $300 per month from 1st February, 1964 to date of recovery of vacant possession, and costs.

The said agreement was not in the form of Schedule XXII and therefore could not be and was not registered under section 116 of the Land Code. As such it was ineffectual to vest the interest in the said premises to the defendant under section 96 of the Land Code. It is therefore clear that it conferred no legal right in the said premises which remained after the transfer to the plaintiff duly registered as the unburdened property of the plaintiff. Be that as it may, in my opinion there is yet another problem to be solved, that is, whether there is a contract subsisting between the plaintiff and the defendant.

In the case of *Haji Abdul Rahman & Ors.* v. *Mahomed Hassan* [1] the transaction was one of conveyance in security and not of transfer with *appended pactum de retrovendendo*, and therefore was not caught within the provisions of the law requiring registration (see sections 4 and 14 of the (Selangor) Registration of Titles Regulation, 1891). It was held that the agreement was valueless as a transfer or burdening instrument, but it was a good contract. Lord Dunedin in the course of his judgment said:

"But when that is said section 4 has no further application. It does not profess to prohibit and strike at contracts in reference to land, provided that such contracts cannot be construed as attempting to transfer, transmit, mortgage, charge, or otherwise deal with the

land itself. In other words, it is contracts or conveyances which, but for the section, might be held to create real rights in a party to the contract or conveyance which alone are struck at".

With regard to the agreement, his Lordship had this to say:

"It is an agreement on the part of the defendant to transfer to plaintiff the land upon a certain contingency happening — in other words, an executory agreement. It is in fact an agreement to do something in the way sanctioned by the law. It is not an attempt to transfer, but a conditional promise to transfer".

There are other cases which have held that although the transfer of land or any interest therein would be ineffectual to pass the legal estate, the question arises as to whether there would be an enforceable contract. I think it would be sufficient if I would only refer to the Court of Appeal case of *Margaret Chua* v. *Ho Swee Kiew & Ors.*[2] where some of the English and local authorities were neatly considered by Thomson C.J. (as he then was). In the course of his judgment, his Lordship, agreeing with the learned trial judge, said:

"....that although the agreement might be a nullity as a lease it could be, and indeed was, a good enforceable agreement for a lease under which the appellant as registered proprietor had undertaken the obligation to grant a lease".

And at page 176 his Lordship said:

"There is, however, a written contract and in my view it is a binding contract".

In that case the agreement was a binding contract dealing with the loan by the respondent to the appellant (registered proprietor) and obliging the latter to grant the former a lease of the land in question for 25 years.

In the light of these authorities I must consider whether the contract under consideration is an enforceable contract. Defence counsel argued that this court has to look at the contract. He contended that in view of the valuable consideration given to the previous owner it was agreed that the defendant's tenancy would not be disturbed. For my part, I think learned counsel is putting the cart before the horse. The proper question for this court at this point would be to consider whether on the proper construction of the said agreement it was an attempt to pass the interest in the said premises to the defendant. If that was so, it would still be caught by the provisions of the Land Code requiring registration. Reading the agreement as a whole, I would not hesitate to come to the conclusion that the said agreement was indeed an attempt to pass such interest in the said premises to the defendant and is therefore not enforceable. The present case is with a difference and can be distinguished from the Privy Council case of *Haji Abdul Rahman* v. *Mahomed Hassan* and the Court of Appeal case of *Margaret Chua* v. *Ho Swee Kiew & Ors.* In both of these cases the agreements were held to be enforceable on the ground that they were not construed as attempts to pass the lands or interests therein but were mere conveyances for loans on the security of the lands.

Accordingly, the agreement cannot be regarded as an agreement for a lease carrying with it an equitable interest in the said premises. That being the case, the final question to be asked is what kind of interest does the defendant possess, and how can such interest be determined? I would quote a passage from the 26th edition of *Woodfall* on "Landlord and Tenant" at page 308, paragraph 741, which I think bears some relevance for our present purpose. It states as follows:

"A legal estate of freehold cannot be created orally or by mere written agreement (not under seal): a person holding under such an agreement is, subject to any equitable right he may have, a tenant at will".

Following the principle of law as stated in the above passage, I now hold that the defendant has merely a tenancy at will and such tenancy can be determined by a demand for possession. As was stated by Tindal C.J. in *Doe d. Price* v. *Price*[3] which case was referred to with approval by Birkett J. in *Fox* v. *Hunter-Paterson*:[4]

"....anything which amounts to a demand for possession....is sufficient to indicate the determination of the landlord's will".

I would therefore hold that the notice to quit dated 20th December, 1963 is a sufficient demand for possession so as to terminate the defendant's tenancy.

Alternatively, it may be observed that the defendant has admitted that he was a monthly tenant and therefore the plaintiff's notice to quit dated 20th December, 1963, terminating the tenancy on 31st January, 1964, would be an adequate notice.

There will therefore be judgment for the plaintiff as prayed and costs.

Claim allowed.

Solicitors: *Shook Lin & Bok; Morris Edgar & Co.*

NADCHATIRAM REALITIES (1960) LTD. v. RAMAN & ORS.

[O.C.J. (Ismail Khan J.) August 12, 1965]

[Seremban — Civil Suit No. 26 of 1965]

Trespass — Whether premises are labourers' quarters or are occupied as tenants at will — Whether labourers occupying quarters after termination of their contract are trespassers — Whether picketing in premises constitute trespass — Employment Ordinance, 1959, s. 15 — Trade Disputes Ordinance, 1949, s. 4.

Employment — Labourers' quarters — Occupation of — Whether as servants or tenants at will.